UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
Plaintiff,))
v.) Case No. 07-CR-0018-001-CVE) (09-CV-0714-CVE-TLW)
DEVIN LEE MELCHER,)
Defendant.)

OPINION AND ORDER

Defendant Devin Lee Melcher filed a notice of appeal (Dkt. # 214) on January 19, 2010.¹ Melcher seeks to appeal the Court's Opinion and Order (Dkt. # 212) denying his motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255. Judgment (Dkt. # 213) was entered on January 5, 2010.

Pursuant to 28 U.S.C. § 2253, a defendant is required to obtain a certificate of appealability before appealing a final order in a proceeding under 28 U.S.C. § 2255. The district court must consider the propriety of issuing a certificate of appealability in the first instance. 10th Cir. R. 22.1(C). Section 2253(c) instructs that the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right," and the court "indicates which specific issue or issues satisfy [that] showing." A defendant can satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Slack v. McDaniel,

A notice of appeal constitutes a request for a certificate of appealability. 10th Cir. R. 22.1(A).

529 U.S. 473 (2000) (citing <u>Barefoot v. Estelle</u>, 463 U.S. 880, 893 (1983)). After considering the record in this case, the Court concludes that a certificate of appealability should not issue as Melcher has not made a substantial showing of the denial of a constitutional right. The record is devoid of any authority suggesting that the Tenth Circuit Court of Appeals would resolve the issues in this case differently. Melcher's request for a certificate of appealability is denied.

IT IS THEREFORE ORDERED that a certificate of appealability is **denied**.

IT IS FURTHER ORDERED that the Court Clerk is directed to send a copy of this Opinion and Order to the Tenth Circuit Court of Appeals.

DATED this 20th day of January, 2010.

CLAIRE V. EAGAN, CHIEF JUDGE UNITED STATES DISTRICT COURT